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## PSYCHOSOMATICS AND COERCED CONFESSIONS

By

EMILY MARK\*

An unwitnessed murder is perpetrated.

The local police arrest a suspect.

If they take him to a magistrate for immediate arraignment he will be set free, since there is not yet sufficient proof that their suspect is the murderer. Therefore, they hold him incommunicado and question him. They need his help for further clues; they hope he will confess and thus furnish them with the best evidence of his guilt.<sup>1</sup>

We expect such action from our police officers. We want the murderer found and adequate proof of his guilt assembled so that he will surely be punished for his crime. But we are finicky about the methods used to assemble such proofs.

"Try to make him confess," we say, "but treat him gently. No rough stuff. And no prolonged interrogations."<sup>2</sup> As if the police and the suspect were engaged in an athletic contest, we insist that there be no blows below the belt. Only "fair" methods may be employed to obtain the confession; otherwise "due process" is violated.<sup>3</sup> And the confession must be "voluntary." The suspect must "wish" to confess, much as the contender in a prize fight voluntarily exposes himself to the fists of the champion. Although necessarily surrounded by police, district attorneys and stenographers, the suspect must be in possession of "mental freedom" when he makes his damaging statement. He must feel free to admit or deny participation in the crime or remain silent.<sup>4</sup>

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<sup>1a</sup> Not provable even by circumstantial evidence.

<sup>1</sup> *People v. Valetutti*, 297 N.Y. 226, 231 (1948)—admissions freely and voluntarily made are "convincing evidence" of guilt; *Sparf & Hansen v. United States*, 156 U.S. 51, 55 (1895)—"deserving of the highest credit;" *Wilson v. United States*, 162 U.S. 613, 622 (1896)—there is a presumption that an innocent person "will not imperil his safety or prejudice his interests by an untrue statement" of guilt.

<sup>2</sup> *People v. Calebressi*, 233 App. Div. 79, 80 (N.Y. 3rd, 1931)—"police officers should be active and diligent in securing confessions, but they should obey the law;" *Moore v. State*, 207 Miss. 140, 155 (1949), cert. denied 338 U.S. 844 (1949)—officers must have evidence before going to a magistrate.

<sup>3</sup> *Harris v. South Carolina*, 338 U.S. 68, 73 (1949); *Watts v. Indiana*, 338 U.S. 49, 55 (1949); *Haley v. Ohio*, 332 U.S. 596, 601, 607 (1948)—due process "prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them." *Lisenba v. California*, 314 U.S. 219, 238 (1941)—"unfairness is at war with due process."

<sup>4</sup> *Lyons v. Oklahoma*, 332 U.S. 596, 602 (1944); *Ashcraft v. Tennessee*, 322 U.S. 143, 154 (1944); *Hysler v. Florida*, 315 U.S. 411, 413 (1942); *Lisenba v. California*, n. 3, p. 241; *Ward v. Texas*, 316 U.S. 547, 555 (1942).

If he confesses because of fear of the police or a hostile mob or as the result of mental or physical torture inflicted upon him by the police or the community, his confession may not be used to convict him. Only when his confession has not been induced by external pressures, is it considered to be a "voluntary" admission of guilt.<sup>5</sup>

Doubt as to the voluntary or involuntary nature of the confession is ordinarily resolved by the trial jury.<sup>6</sup> But the appellate court is free to review the facts and determine that, as a matter of law, the confession was "involuntary" or coerced.<sup>7</sup> Then, "due process" requires that the conviction be set aside even if sufficient additional evidence was adduced at the trial to support a verdict of guilty.<sup>8</sup> The concededly "voluntary" confession may nevertheless have been obtained "unfairly;" "due process" then prevents its use as evidence against the accused.<sup>9</sup>

Before "due process" became of age, coerced confessions were excluded not because of any judicial revulsion against the use of unfair methods to obtain them, but because they were deemed "unreliable" and possibly false.<sup>10</sup> The theory was that some guilty suspects had such a strong sense of guilt that they would freely unburden themselves and tell the truth while interrogated by the police. But innocent persons might respond to such interrogations with untruths if their "fears or hopes" were operated upon by threats or promises of the temporal authorities.<sup>11</sup> Lay juries were instructed to determine from the trial evidence

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<sup>5</sup> In *Lisenba v. California*, n. 3, p. 240, a confession obtained after the accused had conferred with his counsel and heard the confession of his confederate was held to have been voluntary and not coerced, although he had been threatened by the police and persistently questioned during eleven days prior to his arraignment. A second confession after the pressures vitiating the first confession have been removed is admissible. *United States v. Bayer*, 331 U.S. 532, 541 (1947).

<sup>6</sup> *Lyons v. Oklahoma*, n. 4, p. 602.

<sup>7</sup> *People v. Crum*, 272 N.Y. 348, 350 (1936); *Malinski v. New York*, 324 U.S. 401, 404 (1945); *Chambers v. Florida*, 309 U.S. 227, 239 (1940); *Lisenba v. California*, n. 3, p. 237; *Ashcraft v. Tennessee*, n. 4, p. 154—36 hours continuous cross-examination without sleep or food held "inherently coercive."

<sup>8</sup> *Malinski v. New York*, n. 7, p. 404; *Lyons v. Oklahoma*, n. 4, p. 597; *Haley v. Ohio*, n. 3, p. 599.

<sup>9</sup> Although the same tests may be used to determine both the voluntary nature of the confession and the use of "fairness" in its procurement, the questions presented in each are entirely different. *Lisenba v. California*, n. 3, p. 238; *Lyons v. Oklahoma*, n. 4, p. 603; *United States v. Mitchell*, 322 U.S. 65, 68 (1944). *Contra: Malinski v. New York*, n. 7, p. 439 (Stone, C. J. dissenting); *Ward v. Texas*, n. 4, p. 555—confession obtained after a 110 mile automobile ride "was not free and voluntary but was the product of coercion and duress;" its use at the trial was a denial of due process.

<sup>10</sup> *Lisenba v. California*, n. 3, p. 236—"tests are invoked to determine whether the inducement to speak was such that there is a fair risk the confession is false;" *People v. Valletutti*, n. 1, p. 232—"hopes or fears artificially excited," added to natural agitation consequent upon being charged with crime, might result in a false admission.

<sup>11</sup> *Wilson v. United States*, n. 1, p. 622—causing the innocent to lose their "freedom of will or self control." From the evidence, the trial court could determine whether the confession "generally made by persons under arrest, in great agitation and distress, when every ray of hope is eagerly caught at, and frequently under the delusion that the merits of a disclosure will be productive of personal safety," nevertheless proceeded "merely from a sense of guilt." *McGlothlin v. State*, 42 Tenn. 223, 229 (1865).

whether the confession was "voluntary," defined as uttered by a suspect when his mind was "free and unconstrained by fear, or inspired by false hope, or threats or violence, or by illegal and unnecessary delay in arraignment."<sup>12</sup>

The confession of such a "free" mind, representing the outpouring of the guilty conscience, was "true" and sufficient to sustain a verdict of guilty of the crime committed. The confession of the terrorized mind, representing utterances with which the innocent suspect sought to buy his peace from the police, was "false" and incompetent evidence against him. Theoretically, the first question was whether the confession was voluntary or coerced, and the second whether the confession found to have been voluntary was true. In practice, the questions were submitted to the jury simultaneously; reviewing courts accepted the probable truth of the confession as proof of its voluntary nature.<sup>13</sup>

The word "voluntary" was used to connote confessions *induced* by pressures other than police or community duress and coercion. Internal pressures, such as a guilty conscience, desire to avoid investigations which might disclose other crimes or involve friends and relatives, wishful hope that a lesser punishment might be imposed by the court, inarticulated psychological compulsions, did not make the confession involuntary or coerced. The admissible confession was not confined to a spontaneous utterance. It might have been made after 36 hours of police interrogation, without food or sleep,<sup>14</sup> or after 12 hours of grueling all-night interrogation during which a pan containing the bones of the murdered persons was placed in his lap.<sup>15</sup> It was not necessary for the police to tell the suspect of his right to secure counsel and remain silent, or to warn him that his confession would be used against him.<sup>16</sup> To the suggestion that "no cautious person would care to enter into a discussion of his guilt or innocence with his captors when what he said might be used against him,"<sup>17</sup> many courts replied: "The tendency of criminal offenders to talk from no other compulsion than their own guilty consciences is a well-known psychological fact."<sup>18</sup>

When the only questions were whether the confession was true or false and whether external violence, threats of violence, or authoritative promises of

<sup>12</sup> *People v. Valetutti*, n. 1, p. 231, 238.

<sup>13</sup> *People v. Doran*, 246 N.Y. 409, 422 (1927).

<sup>14</sup> *People v. Mummiani*, 258 N.Y. 394, 396 (1932).

<sup>15</sup> *Lyons v. Oklahoma*, n. 4, p. 599-60.

<sup>16</sup> *People v. Randazzo*, 194 N.Y. 147, 158 (1909); *People v. Doran*, n. 13, p. 423, *United States v. Heitner*, 149 F.2d 105, 107 (C.A. 2nd, 1945) cert. denied, 326 U.S. 727 (1945); *Commonwealth v. Bryant*, 367 Pa. 135 (1951), 79 A.2d 193; *Wood v. United States*, 128 F.2d 265, 268n (C.A.D.C. 1942); *Audler v. Kriss*, 79 A.2d 391, 395 (Md. 1951). Texas was the only state holding contra, because of a statute requiring such warning.

<sup>17</sup> *People v. Mleccko*, 298 N.Y. 153, 160 (1948).

<sup>18</sup> *Commonwealth v. Bryant*, n. 16, p. 198. Cf., Jackson, J. in *Ashcraft v. Tennessee*, n. 4, p. 161—voluntary criminal confessions are not similar to religious confessions to rid the soul of a sense of guilt, but usually proceed from a belief that further denial is useless and perhaps prejudicial. Cf., Jackson, J. in *Gallegos v. Nebraska*, U.S. (1951)—a confession is not "coerced" when it results from "the fact that defendant was in custody incommunicado for eight days, the fear that his deeds were known, and the weight of the crime on his conscience."

immunity from punishment or of lesser punishment *induced* the confession—merged in practice into the single question of truth or falsity—, damaging statements made by the defendant prior to arraignment were rarely excluded. Claimed police brutality was treated as the usual and only possible post-confession defense, raising a question of fact for resolution by court and jury.<sup>19</sup>

Prolonged detention, in violation of a statute requiring immediate arraignment or arraignment without unnecessary delay, was condemned as scandalous, criminal and illegal;<sup>20</sup> but did not affect the admissibility of the confession obtained during that period.<sup>21</sup> The use of deception, fraud, violation of confidence, persistent, close, hard questioning pregnant with assumption of the suspect's guilt did not invalidate the confession.<sup>22</sup>

Even proof of police threats and coercion did not render the confession inadmissible. The trial jury was still at liberty to convict if the defendant confessed "because he wanted to confess and the violence or coercion had no bearing upon his making the confession."<sup>23</sup> For, "more powerful than the external compulsions were the fatal internal struggles of the murderer's secret. It beat at his heart, rising to his throat demanding disclosure; it betrayed his discretion, broke down his courage, conquered his prudence. When embarrassed by suspicions from without, it violently burst forth and confessed."<sup>24</sup> As long as the trial judge, jury and appellate court were satisfied that the confession was this outpouring of a guilty conscience—reified facts demanding to be confessed—and not a figment of the suspect's imagination, they refused to concern themselves

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<sup>19</sup> *People v. Mummiani*, n. 14. *Contra: People v. Valletutti*, n. 1—brutality held to have caused confession as a matter of law where there were physical signs of violence plus present avowal of innocence plus delayed arraignment plus 20 hours incommunicado plus minority of defendant.

<sup>20</sup> *People v. Redmond*, 265 App. Div. 307, 309 (N.Y. 3rd, 1942); *People v. Kelly*, 264 App. Div. 14, 16 (N.Y. 3rd, 1942); N.Y. Penal Law 1844; *Bass v. New York*, 196 Misc. 177 (Ct. Cls. N.Y., 1949)—monetary damages of \$250 awarded against the State for pre-arraignment detention and all-night questioning to obtain a confession, after suspect had been identified by complaining witness.

<sup>21</sup> *People v. Alex*, 265 N.Y. 192, 194 (1934); *People v. Doran*, n. 13, p. 423; *People v. Trybus*, 219 N.Y. 18, 22 (1916); *United States v. Mitchell*, n. 9, p. 69; *Malinski v. New York*, 292 N.Y. 360, 372 (1944), *revd.*, n. 7—otherwise, the police would have power "to confer immunity" on a criminal. *Contra* in the federal courts: *McNabb v. United States*, 318 U.S. 332, 344, 345 (1943); *Anderson v. United States*, 318 U.S. 350, 355 (1943); *Upshaw v. United States*, 335 U.S. 410, 413, 414 (1948).

<sup>22</sup> *People v. White*, 176 N.Y. 331, 349 (1903); *People v. Buffom*, 214 N.Y. 53, 57 (1915); *People v. Furlong*, 187 N.Y. 198, 212 (1907); *People v. Perez*, 300 N.Y. 208, 218, 221 (1949), *cert. denied*, 338 U.S. 952 (1950); *Lyons v. Oklahoma*, n. 4, p. 601.

<sup>23</sup> Trial court's charge to jury in *People v. Leyra*, 302 N.Y. 353 (1951).

<sup>24</sup> Paraphrased from Daniel Webster's speech in *State v. Knapp*, quoted in Wharton, *IN-VOLUNTARY CONFESSIONS*, 15 (1860). Confessions were entitled to "full credit" when made "under any frenzy of mind, from the effects of guilt, and anguish, and sufferings, which the accused could no longer endure." *People v. Johnson*, 2 Wheeler's C.C. 361, 389 (N.Y. 1824).

with the method used to arouse the conscience.<sup>25</sup> The content of the confession—its reference to verifiable corroborative circumstantial evidence and its calm and composed recitals—was ample proof of its truth. Its truth was ample proof that the guilty conscience had caused its utterance, i.e. that it was voluntary.<sup>26</sup>

The current requirement of "fairness" in pre-arraignment dealings between the police and the suspect make future convictions on uncorroborated confessions unlikely. In effect, it extends the mantle of judicial due process to the police station and compels police officers to behave as if they were in the courtroom.<sup>27</sup> Psychological devices to "break" the suspect, such as stripping him and forcing him to stand naked for hours before a battery of fully clothed questioners, are unfair.<sup>28</sup> Failing to inform the suspect of his right to counsel, to immediate arraignment, to remain silent is unfair.<sup>29</sup> Keeping him in solitary confinement or in prolonged custody without opportunity to communicate with his friends, family or attorney, is unfair.<sup>30</sup> Torturing or coercing his mind by accusatorial interrogation, even if accomplished through subtle psychiatric interviews, is unfair.<sup>31</sup> Due process is offended by confessions so obtained *not* because they may be false or the result of illegal acts, but because a civilized community such as ours will not stoop to any form of mental or physical torture to prove its case against the criminal.<sup>32</sup> Justice will be done, we proclaim, with

<sup>25</sup> *People v. Mummiani*, n. 14, p. 412; *People v. Defore*, 242 N.Y. 13, 19 (1926) cert. denied, 270 U.S. 657 (1926); *Olmstead v. United States*, 277 U.S. 438, 468 (1928)—"a standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore." *Lisenba v. California*, n. 3, p. 235—due process does not apply to pretrial proceedings. Contra: in the federal courts when the confession was obtained during prolonged pre-arraignment detention, n. 21.

<sup>26</sup> *People v. Doran*, n. 13, p. 422.

<sup>27</sup> Where a defendant may not be tricked or coerced into pleading guilty to a crime. *Matter of Lyons v. Goldstein*, 290 N.Y. 19, 25 (1943); *Waley v. Johnston*, 316 U.S. 101, 104 (1942). Or permitted to plead guilty without aid of counsel, unless first advised by the court of his right to counsel and intelligently waiving that right. *People v. Richetti*, 302 N.Y. 290, 296 (1951); *Walker v. Johnston*, 312 U.S. 275, 286 (1941); *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938).

<sup>28</sup> *Malinski v. New York*, n. 7, p. 405, 432.

<sup>29</sup> *Harris v. South Carolina*, n. 3, p. 70; *Agoston v. Pennsylvania*, 340 U.S. 844, 845 (1950).

<sup>30</sup> *Chambers v. Florida*, n. 7, p. 239 (1940); *Canty v. Alabama*, 309 U.S. 629 (1940); *White v. Texas*, 309 U.S. 631 (1940), 310 U.S. 530 (1940); *Watts v. Indiana*, n. 3, p. 53; *Turner v. Pennsylvania*, 338 U.S. 62, 64 (1949); *Johnson v. Pennsylvania*, 340 U.S. 881 (1950); *Glasser v. United States*, 315 U.S. 60, 71 (1942); *People v. Snyder*, 297 N.Y. 81, 90 (1947); *House v. Mayo*, 324 U.S. 42, 46 (1945)—denial of right to counsel vitiates a plea of guilty on arraignment and sentence thereon. Contra: *Gallegos v. Nebraska*, n. 18—prolonged detention, lack of counsel are "elements" to be considered in determining whether due process has been violated; but the test is solely the confession's "voluntariness."

<sup>31</sup> *Watts v. Indiana*, n. 3, p. 52, 54; *People v. Leyra*, n. 23—hypnotism by psychiatrist claimed. Contra: when psychiatrist advises accused "you need not say one word if you don't want to speak to us." *People v. Fernandez*, 301 N.Y. 302, 332 (1950).

<sup>32</sup> *Lisenba v. California*, n. 3, p. 235, 236; *Lyons v. Oklahoma*, n. 4, p. 605; *Haley v. Ohio*, n. 3, p. 600; *Rouchin v. California*,—U.S.—(1952)—the community's "sense of fair play and decency" is offended and its "conscience" is shocked by such tactics. Contra: *Reed, J.* concurring in *United States v. Mitchell*, n. 9, p. 71: "The juristic theory under which a confession is admitted or barred is bottomed on its testimonial trustworthiness."

"evidence independently secured thru skillful investigation and not out of the mouth of the accused,"<sup>33</sup> unless he wanders into the station house and begs the police for punishment.<sup>34</sup> The effect of such chivalry is to outlaw most confessions obtained during pre-arraignment detentions and require the police to "stand by helplessly while those suspected of (an unwitnessed) murder prowls about unmolested."<sup>35</sup> It enables the experienced criminal to go free and limits convictions and punishment to those inexperienced in legal maneuvers or sufficiently inept to have left behind convincing external evidence of their connection with the crime.

This enshrinement of "fairness" in the contest between the community and the suspected perpetrator of the unwitnessed crime is a strange anomaly in our law. In all other contacts between the community and the individual, the latter must suffer inconveniences and even hardships if required by the general welfare. He must risk his life on the battlefield, conform his personal conduct to the standards of the community, contribute his property and the product of his labors to the common good.<sup>36</sup> His constitutional or statutory privilege against self-incrimination is not a right "basic to our society," of which he must be advised by his interrogator. It is deemed waived unless affirmatively claimed in response to every question calling for an incriminating answer.<sup>37</sup> It may not be claimed if the forum has by statute granted complete immunity from prosecution for the crime that might be revealed by the incriminating answer,<sup>38</sup> although such immunity granted by a state does not prevent federal prosecution for the admitted offense and vice versa.<sup>39</sup> It may be infringed by the states without violating due process.<sup>40</sup> It applies only to oral or written utterances and does not

<sup>33</sup> *Watts v. Indiana*, n. 3, p. 54.

<sup>34</sup> *Ohio v. Higgins*, *NY Times* 4/13/51—defendant told Nassau County (N.Y.) police that he poisoned his wife's glass of wine at East Liverpool, Ohio, eight days before her death on Jan. 27, 1941 but had never been questioned about the case, which had been listed as a suicide. His reason for confessing: "I can't sleep. I keep thinking about it. I want it off my chest. I feel much better off now."

<sup>35</sup> *Watts v. Indiana*, n. 3, p. 61-2 (Jackson, J. dissenting). Mr. Justice Douglas believes all confessions obtained during prolonged pre-arraignment interrogation should be inadmissible, because the substitution of police inquisition or protective custody for the safeguards of a hearing before a magistrate is a denial of due process. *Agoston v. Pennsylvania*, n. 29, p. 845; *Watts v. Indiana*, n. 3, p. 57; *Harris v. South Carolina*, n. 3, p. 73; *Turner v. Pennsylvania*, n. 30, p. 67.

<sup>36</sup> 50 USC App. 454; *Reynolds v. United States*, 98 U.S. 145 (1878); *Hamilton v. Regents*, 293 U.S. 245 (1934); *Jacobson v. Mass.*, 197 U.S. 11 (1905); *Prince v. Mass.*, 321 U.S. 158 (1944); *Kordel v. United States*, 335 U.S. 345 (1948); *Nebbia v. New York*, 291 U.S. 502 (1934); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Woods v. Miller Co.*, 333 U.S. 138 (1948); *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937); *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934); *Buck v. Bell*, 274 U.S. 200 (1927); *United States v. Sanchez*, 340 U.S. 42 (1950).

<sup>37</sup> *Rogers v. United States*, 340 U.S. 367 (1951); *People v. Kennedy*, 159 N.Y. 346, 360 (1899)—an accused of ordinary intelligence is presumed to know that he may remain silent when interrogated by the police.

<sup>38</sup> *Matter of Doyle*, 257 N.Y. 244 (1931).

<sup>39</sup> *Feldman v. United States*, 322 U.S. 487, 490 (1944).

<sup>40</sup> *Adamson v. California*, 332 U.S. 46, 54 (1947); *Palko v. Conn.*, 302 U.S. 319, 325, 326 (1937); *Twining v. New Jersey*, 211 U.S. 78, 113 (1908); *N.Y. Const. Art. I, § 6*; *Brown v. Mississippi*, 297 U.S. 278, 285 (1936).

prevent compulsory physical examinations, bloodtests, fingerprinting, search of the person or seizure of incriminating papers.<sup>41</sup> His right of privacy does not guarantee against "the knock at the door" or against a search or an arrest for which a warrant could not have been obtained. It may be invaded by law enforcement officers who believe he has violated our criminal laws and the time is ripe "to close the trap" on him.<sup>42</sup> They may hold him at will as a material witness while determining whether he is also the perpetrator of the crime.<sup>43</sup> They may convict him on evidence obtained in violation of statutes forbidding wiretapping and constitutional prohibitions against unreasonable searches.<sup>44</sup> Such procedures are "fair" because the welfare of our society demands them, because our community cannot maintain an ordered existence without them. "Fairness" in these matters is not an abstract ideal but the practical result of giving primary consideration to the needs of the community.

When a confession which may send an individual to the gallows is involved, "fairness" becomes a reflection of the emotional reactions of the appellate judges.<sup>45</sup> To compel a man to give evidence against himself in a state proceeding in which he is later convicted of using the mails to defraud, raises a question of the applicability of the Fifth Amendment, which can be discussed with comparative dispassion.<sup>46</sup> But to compel him to answer extrajudicial interrogations in a police station on which he may later be convicted of first degree murder, presents an entirely different situation. This is indecent behavior, procedure unworthy of a nation priding itself on its respect for individuals as persons.<sup>47</sup> Or it is coercion

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<sup>41</sup> *Holt v. United States*, 218 U.S. 245, 252, 253 (1910); *United States v. Kelly*, 55 F.2d 67 (C.A. 2nd, 1932). Cf., *Rochin v. California*, n. 32—use of a stomach pump to obtain incriminating evidence is not compulsory self-incrimination but a shocking, brutal and "unfair" method of coercing a confession, and therefore a violation of due process. The "brutality" of the use of a stomach pump to obtain that organ's contents seems akin to the "inhumanity" sometimes ascribed to vivisection by its opponents. Stomach pumps are constantly used by hospital nurses to obtain gastric juice, bile or pancreatic juice for examination. As a rule, it is a simple procedure not requiring the supervision of a physician. Blumgarten, *A TEXTBOOK OF MEDICINE*, 294, 295 (1927).

<sup>42</sup> *United States v. Rabinowitz*, 339 U.S. 56, 65 (1950); *Olmstead v. United States* n. 25, p. 468; *Goldman v. United States*, 316 U.S. 129 (1942); *People v. Defore*, n. 25, p. 24.

<sup>43</sup> *Gross v. Sheriff*, 302 N.Y. 173 (1951); *People v. Perez*, n. 22, p. 217.

<sup>44</sup> *Adams v. New York*, 192 U.S. 585, 595 (1904); *In re Guzzardi*, 84 F. Supp. 294 (D.C. Tex., 1949)—stomach pump an unreasonable search but evidence obtained by state officers thereby admissible in federal courts; *People v. Defore*, n. 25—wiretapping; *State v. Mara*, 78 A.2d 922, 924 (N.H. 1951); *Wolf v. Colorado*, 338 U.S. 25, 33, 39 (1949)—where the states permitting such use are tabulated. Contra: in the federal courts if evidence illegally obtained by federal officers: *Nardone v. United States*, 302 U.S. 379, 382 (1937); *Lustig v. United States*, 338 U.S. 74 (1949); *Rickards v. State*, 77 A.2d 199, 205 (Del. 1950).

<sup>45</sup> *Haley v. Ohio*, n. 3, p. 603—whether a confession is admissible "invites a psychological judgment that reflects deep, even if inarticulate, feelings of our society." *Rochin v. California*, n. 32—the requirement of "fairness" makes admissibility of a confession "turn on the idiosyncracies of the judges who sit" in the appellate court.

<sup>46</sup> *Feldman v. United States*, n. 39.

<sup>47</sup> *Haley v. Ohio*, n. 3, p. 600; *Rochin v. California*, n. 32.



which due process forbids as basis of a conviction.<sup>48</sup> Or it is proper and necessary police procedure, without which unwitnessed crimes would remain unsolved.<sup>49</sup>

No court has ever veered from the juristic principle that non-compelled, non-coerced, purely voluntary testimony is admissible. Witnesses must be sworn on a Bible or object of similar meaning to them and publicly acknowledge their awareness that a supernatural power will punish them if they testify falsely. Those who do not believe in a supernatural power or that such punishment will follow false testimony, must be sworn in the mode equally solemn and obligatory to them.<sup>50</sup> Although it is well-known that "fools and children" cannot stick to an invented story when closely questioned,<sup>51</sup> receipt of their unsworn testimony is reversible error.<sup>52</sup> All humans must be placed in fear of punishment by their God or temporal authorities before they will be heard in a judicial proceeding.<sup>53</sup>

Dying declarations are admitted only upon proof that the declarant then believed his death certain and imminent; was so "impressed with the awful idea of approaching dissolution" that the usual human feelings influencing testimony, such as malice, hatred, and passion, were "overwhelmed and banished."<sup>54</sup>

Even if spoken in the "hush of death's impending presence," these declarations are admissible only in trials for murder, manslaughter or abortion; elsewhere they are of no testimonial value because unsworn.<sup>55</sup>

Living witnesses are reminded that temporal punishment for perjury will also be inflicted upon them, if they testify falsely. When subpoenaed, they must take the stand and answer the questions asked of them. If they claim their answers will show their commission of a crime, the court may excuse them from such answers. But if there is an adequate immunity statute in effect, or if they waived immunity to keep their jobs as public officers, they must answer.<sup>56</sup> If they still refuse, their testimony will be compelled by imprisonment for contempt of court.

The statements made by persons thus compelled to speak and threatened with divine and temporal punishment if they do not speak the truth are the only

<sup>48</sup> *Ashcraft v. Tennessee*, n. 4, p. 154; *Lyons v. Oklahoma*, n. 4, p. 607 (Murphy, J. dissenting). Cf., Jackson, J. dissenting in *Ashcraft*, p. 161—"arrest itself is inherently coercive, and so is detention."

<sup>49</sup> *Watts v. Indiana*, n. 3, p. 58 (Jackson, J., dissenting).

<sup>50</sup> See for example *N.Y. Civil Practice Act*, § 360 *et seq.* All judicial forums have similar statutes.

<sup>51</sup> *People v. Johnson*, 185 N.Y. 219, 231 (1906).

<sup>52</sup> *Gehl v. Bachmann-Bechtel Brewing Co.*, 156 App. Div. 51 (N.Y. 2nd 1913); *Salmon v. Sunday*, 134 Misc. 475 (N.Y. App. T. 1st, 1929). N.Y. Code of Criminal Procedure, § 392, permits unsworn testimony of a child under 12 years of age in certain criminal prosecutions, if supported by other evidence. But the court must be satisfied that the child knows it is "wrong" to lie and that false testimony will be punished. *People v. Linzey*, 79 Hun 23 (N.Y. 1894).

<sup>53</sup> *Throckmorton v. Holt*, 180 U.S. 552, 573 (1901)—unsworn utterances are without value as proof of their truth because they are unsworn.

<sup>54</sup> *People v. Sarzano*, 212 N.Y. 231, 234 (1914); *Shepard v. United States*, 290 U.S. 96, 99 (1933).

<sup>55</sup> *People v. Becker*, 215 N.Y. 126, 145 (1915); N.Y. Code of Criminal Procedure, § 398a.

<sup>56</sup> *People ex rel. Coyle v. Truesdell*, 259 App. Div. 282, 284 (N.Y. 2nd, 1940); *People ex rel. Hofsaes v. Warden*, 302 N.Y. 403 (1951); 18 U.S.C. 3486 grants immunity to witnesses testifying before Congress or any joint congressional committee. N.Y. Penal Law, §§ 381, 584, 996, give automatic immunity to those subpoenaed to testify in anarchy, bribery, gambling and kidnapping investigations.

ones we feel "safe" in receiving in our courtrooms. So basic is this concept of compulsion and coercion as a prerequisite for truthful testimony, that favorable witnesses are usually asked by trial counsel whether they have appeared pursuant to subpoena; neither judge nor jury must entertain the thought that such supporting evidence was voluntarily given. In the courtroom, we conclusively assume that voluntary testimony is *not* necessarily truthful, so that fear of punishment for perjury is necessary to insure a probability of truth. There, involuntary testimony is not conclusively or even presumptively false. It is never "unfair," although it is well-known that many witnesses feel terrified and coerced by courtroom procedure.<sup>57</sup>

Courtroom compulsion and coercion may not be used against an accused because of the Fifth Amendment's privilege against self-incrimination, and similar guarantees in state constitutions and statutes. If an accused is forced to take the witness's oath and testify, his statements may not be used to prove the crime.

While the constitutional and statutory provisions are applicable only to judicial proceedings,<sup>58</sup> the humane principle behind them and the historic abuses prompting their enactment have affected the acceptance or rejection of extrajudicial admissions of guilt. The early confession cases held the admonitions of police and complaining witness to "tell the truth" just as compelling and coercive as the subpoena and the oath.<sup>59</sup> The accused could not be forced to incriminate himself in Court; therefore, he would not be forced to incriminate himself elsewhere. When the prosecution depended upon the extrajudicial incriminating statement obtained without courtroom compulsion or coercion, courts evolved the theory of "purely voluntary mental action." Proof that the accused was under arrest when he confessed, or had been told that it "would be better for him to own up," automatically vitiated the confession.<sup>60</sup> "The human mind is easily seduced," they said in explanation of rejection of such incriminating statements. "In the alarm of danger, humans are liable to acknowledge indiscriminately a falsehood or a truth, as different agitations may prevail."<sup>61</sup> Lacking objective proof of the state of mind of the accused when he made the confession, some courts excluded all incriminating statements which might have been induced by external suggestion, threat, promise or "influence."<sup>62</sup> Other courts admitted all incriminating statements not shown to have been induced by threats or promises of the temporal authorities of such force as to deprive the accused of his "free-

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<sup>57</sup> Shientag, *TRIAL OF A CIVIL JURY ACTION* 63 (1938)—"There is some perjury, but for the most part false testimony is due to defective observation, inability to state accurately what was in fact observed, faulty recollection, unconscious partisanship or suggestion, the tendency to exaggerate and to resort to the imagination."

<sup>58</sup> *Wood v. United States*, n. 16, p. 268; *Adams v. New York*, n. 44, p. 598.

<sup>59</sup> *Bram v. United States*, 168 U.S. 532, 552-7, 559-61 (1897); *People v. Phillips*, 42 N.Y. 200, 202-3 (1870).

<sup>60</sup> *People v. Phillips*, n. 59; *People v. Mondon*, 103 N.Y. 211, 221 (1886).

<sup>61</sup> *Bram v. United States*, n. 59, p. 547.

<sup>62</sup> *Bram v. United States*, n. 59, p. 542, 564; *Wan v. United States*, 266 U.S. 1, 14-5 (1924)—"whatever may have been the character of the compulsion."

dom of will or self control."<sup>63</sup> This freedom the accused was presumed to have retained during police custody, interrogation and warning that countless witnesses were available to prove the crime, so he might "just as well tell the truth."<sup>64</sup> Since the former approach would exclude most confessions, state courts gradually adopted the latter.

From the conflicting testimony on the nature of the claimed coercing threats and promises and the conditions under which the confession was made, juries determined whether the accused was guilty or innocent. In spite of judges' charges to them to disregard the confession induced by physical violence, threats or promises overpowering the free will of the accused, juries returned guilty verdicts in the face of third-degree police methods dangerously resembling the seventeenth century torture by the rack. Fortunately, the United States Supreme Court reversed such convictions.<sup>65</sup> But it did not accept the theory of the early cases that the suspect could not be forced to incriminate himself;<sup>66</sup> nor the theory that fear may cause an accused to confess a crime he did not commit; nor the federal rule outlawing evidence obtained by illegal methods. Instead, the Supreme Court established the "unfairness" theory, foreclosing the police from using trickery, prolonged examination or other devices, irrespective of their effect or noneffect on the mind of the accused or their legality under state statutes and decisions. It invalidated the true, voluntary confession if "unfairly" obtained.

Until police officers are relieved of their duty to be "active and diligent in securing confessions" and evidence sufficient to insure the holding of a guilty suspect by the committing magistrate,<sup>67</sup> and confessions obtained during pre-arraignment interrogation are completely outlawed, each confessing defendant will litigate the validity of his confession. Particularly if he is represented by the alert, devoted attorney to whom he is entitled.<sup>68</sup> Judicial knowledge of the etiology of confessions would seem a prerequisite to the determination of the fairness or unfairness of the methods now used to obtain them.

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The once prevalent theory that truth is spontaneous<sup>69</sup> and comes without conscious effort, while the utterance of a falsehood requires a conscious effort which

<sup>63</sup> *Wilson v. United States*, n. 1, p. 622.

<sup>64</sup> *People v. Kennedy*, n. 37, p. 360.

<sup>65</sup> *Brown v. Mississippi*, n. 40, p. 285-6; "The rack and torture chamber may not be substituted for the witness stand."

<sup>66</sup> Cf., Black, J. dissenting in *Feldman v. United States*, n. 39, p. 499—"Compulsion of self-incriminatory testimony by court oaths and by the less refined methods of torture were equally detested by the Fifth Amendment." Cf., Black, J. and Douglas, J. concurring in the result in *Rochin v. California*, n. 32—evidence obtained by coercing testimony or forcibly using a stomach pump are inadmissible because they constitute compelled self-incrimination, not because of "unfairness."

<sup>67</sup> See n. 2.

<sup>68</sup> *Moltke v. Gillies*, 332 U.S. 708 (1948); *Wade v. Mayo*, 334 U.S. 672 (1948); *Gibbs v. Burke*, 337 U.S. 773 (1949).

<sup>69</sup> Contemporaneous admissions or denials of guilt are competent evidence as part of the *res gestae*. The utterer is deemed to have been laboring under the excitement and strain of his act, with no time to deliberate or fabricate.

is reflected in a rise in systolic blood pressure, has never received judicial or medical recognition.<sup>70</sup> Both parts of the theory are fallacious. The spontaneity of truth depends on the particular truism, the societal attitude toward its substance, and the characteristics of the utterer.

Novelists tell us that in bygone days no respectable wife blurted out her state of pregnancy. She knitted dainty garments and awaited interrogations. Only when sufficiently prodded did she reluctantly, modestly, and with a becoming blush<sup>71</sup> (and no change in blood pressure) admit the truth. If such a truth was spontaneously uttered, the utterer was not a lady. Even today, our culture encourages and demands falsehood in daily life. Suppression of the truth is socially desirable in winning friends, keeping jobs, getting along with neighbors.

A gossamer line divides the falsehoods condoned and condemned by the community. A large segment of our people, including some of our most esteemed artists and physicians, do not regard truth as an absolute goal or lying as an evil per se. For them there are "acceptable social forms" of lies "that anybody with any intelligence uses all the time."<sup>72</sup> A sizable majority would rather lie out of a situation than courageously face it.<sup>73</sup> Should childhood teachings cause occasional twinges of conscience, they satisfy that twinge by taking "into consideration the nature of the lie and why it was told, to whom it was told, and his reaction to the lie."<sup>74</sup> Even persons trained to distinguish between fact and fancy are able to indulge in such self-deception that their courtroom oath to tell the truth means for them an oath to tell the fanciful story they have deceived themselves into believing to be the truth.<sup>75</sup> Systolic blood pressure may rise with conscious effort but also rises with unconscious effort and for many other reasons.<sup>76</sup> Statements made while under the influence of "truth-telling" drugs have been dismissed as "clap trap, unworthy of serious consideration."<sup>77</sup>

<sup>70</sup> *Frye v. United States*, 293 Fed. 1013, 1014 (C.A.D.C., 1923); *People v. Forte*, 279 N.Y. 204, 206 (1938); *State v. Lowry*, 163 Kans. 622, 628 (1947). Contra: *People v. Kenny*, 167 Misc. 51 (Queens County Court, N.Y., 1938). It is akin to the once prevalent procedure of requiring the suspect to touch the corpse of the murdered man. *People v. Johnson*, n. 24, p. 378; *State v. Storms*, 85 N.W. 610, 612 (Iowa, 1901). Hamlet used a similar device to ascertain the identity of the murderer of his father.

<sup>71</sup> Blushing is the effect of failure of the cutaneous blood vessels or capillaries to hold their bloody contents in place. These escape into the surrounding tissue. If the flush is sufficiently intense and prolonged, hives develop. Embarrassment mixed with resentment accompanies the vasodilatation and "blush" reaction. *LIFE STRESS AND BODILY DISEASE*, published by the Association for Research in Nervous and Mental Disease, p. 1006-7 (1950).

<sup>72</sup> Expert opinion testimony of Carl A. L. Binger in *United States v. Hiss*, 185 F.2d 822 (C.A. 2d, 1950), cert. denied 340 U.S. 948 (1951), Transcript, p. 2689.

<sup>73</sup> 40 JOURNAL OF CRIMINAL LAW & CRIME 135, 136, 142, 143 (1949).

<sup>74</sup> N. 72, Transcript, p. 2698.

<sup>75</sup> Toledano & Lasky, *SEEDS OF TREASON* (1950), details the tragedy of Alger Hiss (n. 72) who carried self-deception or lying to a disastrous extreme. The testimony of Binger, n. 72, indicates that he, too, may have been indulging in self-deception in formulating his expert opinion.

<sup>76</sup> *Op. cit.* n. 71, pp. 775-983.

<sup>77</sup> *State v. Hudson*, 289 S.W. 920, 921 (Mo., 1926); *People v. Wochnick*, 219 P.2d 70 (Calif., 1950); *Boeche v. State*, 151 Neb. 368 (1949); *People v. Esposito*, 287 N.Y. 389, 398 (1942). Confession of guilt obtained by hypnotism outlawed as "unfair." *People v. Leyra*, n. 23. Proof of innocence obtained by hypnotism outlawed as "illegal." *People v. Ebanks*, 117 Calif. 652, 665 (1897).

The guilty conscience clamoring to be confessed was once thought to be a manifestation of the "grand system of Providence, by which guilt is lodged in the intent."<sup>78</sup> Whether the confessor actually committed the crime to which he confessed or only intended to commit it was immaterial to Providence, which considered him equally punishable in either event. When the law accepted such a confession as proof of guilt, it was carrying out its own system if the crime was committed or the providential system if, the crime was merely intended.<sup>79</sup>

Today's psychiatrists believe that the criminal's guilty conscience is a general feeling of guilt—prevalent in certain types of neurotics, hysterics and schizophrenics—driving the affected individual to seek out punishment. His inner need for suffering, we are told, propels him to commit a crime or merely imagine he has committed it. He wishes to be punished not for the crime he has actually or fancifully committed but in appeasement of his craving for punishment *per se*.<sup>80</sup> Such an individual may confess a crime he did not commit.<sup>81</sup> Recognition of the impelling force of the general feeling of guilt, which drives "men readily to accuse themselves of all kinds of iniquity, suspect themselves of crimes which they have never committed, urge some to the most false confessions whilst they were extracted from others by the dread of torture or the tedious misery of the dungeon" resulted in the juristic requirement of proof of the *corpus delicti*.<sup>82</sup> But this proof merely gave the court the same facts on which the neurotically guilty built his false confession. It was not proof that he committed the crime nor did it disprove his mentally abnormal state.

The nonpsychotic, nonneurotic individual has no urge of self-destruction, self-condemnation or punishment. If crime is his way of life, he has no consciousness of having wronged the community; the law he is accused of violating is nonexistent for him.<sup>83</sup> Neither the psychological nor the ecclesiastical guilty conscience would cause such a person to confess. He must be provoked or trapped into an admission of guilt.<sup>84</sup> Common sense, history, judicial and medical experience show that we are engaged in wishful thinking when we rely on an invisible, subjective compulsion for proof of the perpetration of the unwitnessed crime. When such a compulsion does exist, it is a phenomenon of which the law should be wary. Without independent, corroborative evidence connecting the confessor with

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<sup>78</sup> Wharton, *op. cit.* n. 24, p. 20.

<sup>79</sup> [Judicial processes and execution chambers may not be used today to enforce the providential system U. S. CONST. Amend. 1; *Everson v. Board of Education*, 330 U.S. 1 (1947); *McCollum v. Board of Education*, 333 U.S. 203 (1948).]

<sup>80</sup> Abrahamsen, CRIME AND THE HUMAN MIND 32-3, (1945).

<sup>81</sup> *People v. Buffom*, n. 22, p. 57; *People v. Johnson*, n. 24, p. 382, refers to *State v. Boorn* (Vt., 1819), in which two brothers confessed to the murder of their brother-in-law in sufficient detail to enable corroboration by circumstantial evidence. The brother-in-law appeared in time to intercept the execution of one of the confessed murderers. Forty years later, Boorn confessed to the same murder in Ohio, claimed that he had escaped punishment by impersonating the brother-in-law. Similar instances of such delusory confessions appear in Wharton, *op. cit.* n. 24, p. 17 *et seq.*

<sup>82</sup> Wharton, *op. cit.* n. 24, p. 23-4.

<sup>83</sup> *Op. cit.* n. 80, p. 60-1, 137.

<sup>84</sup> 43 ILL. L. REV. 442, 450 (1948).

the specific crime to which he confesses, there is no known method of determining whether the confession is true or false.<sup>85</sup> Nor is such a man free to admit or deny the deed or remain silent. Under both psychological and ecclesiastical explanations of the guilty conscience, the subjective compulsion is more coercive and productive of "involuntary" confessions than prolonged interrogation or psychiatric devices.

No sane person will voluntarily choose the electric chair or life imprisonment with full knowledge and realization that he cannot be convicted or punished unless he confesses. When faced with a confession made under emotional stress, moral compulsion, irresistible impulse or police interrogation, he will usually deny the truth of the confession or endeavor to excuse the homicide.<sup>86</sup> Our entire political philosophy is premised on man's desire to survive and live without restraint.<sup>87</sup> The question before the community, confronted with an unwitnessed murder and a suspect in police custody, is whether it will indict and convict only those harassed by a subjective compulsion which they are unable to resist. To reach the criminal, free of subjective compulsion or sufficiently experienced to resist it, prolonged interrogation and psychiatric devices are necessary.

When the use of confessions obtained by such external compulsions was originally outlawed as "unfair," the actual effect of these activities on the suspect could not be determined.<sup>88</sup> A man's state of mind or feeling, if relevant in a judicial proceeding, was provable by his contemporaneous declarations of feeling, his facial expressions, gestures, sounds, or words.<sup>89</sup> The jury determined whether these expressions were "genuine or feigned," i.e. involuntary bodily reactions or voluntary conscious motions made for their effect on others.<sup>90</sup> When a man's thought or memory was relevant, the jury determined whether his testimony on "what he thought or what he did or did not remember" was true or false. If the jury did not believe his claimed loss of memory, and concluded that events he swore he "did not remember" were at that time within his knowledge and recollection, he could be convicted of perjury.<sup>91</sup> The state of mind or feeling of a truthful man was what he said it was; the state of mind or feeling of an untruthful man was what the opposing litigant claimed it was. Even appellate judges

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<sup>85</sup> N. 72, Transcript, p. 2594, 2595, 2889; 2689—it may be mere "boasting."

<sup>86</sup> *People v. French*, 12 Calif. 2d 720, 732 (1939); *People v. Leyra*, n. 23; *People v. Worthington*, 105 Calif. 166, 172 (1894); *Williams v. State*, 226 P.2d 989, 993—(Okla., 1951).

<sup>87</sup> Preamble to DECLARATION OF INDEPENDENCE.

<sup>88</sup> *Haley v. Ohio*, n. 3, p. 606: "Unhappily we have neither physical nor intellectual weights and measure by which judicial judgment can determine when pressures in securing a confession reach the coercive intensity that calls for the exclusion of a statement so secured." Therefore, said Mr. Justice Frankfurter, we must rely on the court's "psychological judgment" of the feelings of our society.

<sup>89</sup> *Shepard v. United States*, n. 54, p. 104; *Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285, 295 (1892); *Matter of Kennedy*, 167 N.Y. 163, 173 (1901).

<sup>90</sup> *Op. cit.* n. 57, p. 51-2—"the state of a man's mind is as much a fact as the state of his digestion." Here the law obliquely recognizes that a "state of mind" or "feeling" is a bodily reaction over which the individual has no control. *Cf.*, *People v. Eurich*, 278 App. Div. 717 (N.Y. 2d, 1951)—jury competent to determine whether automobile driver had "concern for others" from his remarks as he took the wheel.

<sup>91</sup> *People v. Doody*, 172 N.Y. 165, 173 (1902).

determined state of mind or feeling by *their* emotional appraisal of the veracity of the individual involved.<sup>92</sup> His statement that he was in fear or in pain was accepted as proof that *the act complained of* did in fact terrorize or cause him pain.<sup>93</sup> No scientific tests were available to contradict him, to gauge the amount of his fear or pain, to establish or refute their connection with the claimed causative act.

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Current experiments at the New York Hospital and the Cornell Medical College in the field of psychosomatics furnish such scientific tests. With delicate apparatus and photography the experimenters are able to observe and record a man's state of mind or feeling with as much accuracy as the X-ray observes and records his bones.<sup>94</sup>

The experimenters have found that an emotional "feeling" is not something confined to the brain, mind or nervous system. It is the physical reaction of one or more organs of the human body to a specific stimulus. Our language has long recognized the physical nature of feelings: fear took my breath away, made my hair stand on end, lent wings to my feet; he's a pain in the neck, a headache, a gripe; he was hot under the collar, pale with rage, in a cold sweat; he has a lump in his throat, is a stiff-necked fellow, trembled with fear, shook with rage; faint heart ne'er won fair lady.<sup>95</sup> The individual experiencing the "feeling" may be conscious of some of the visceral reactions, such as a constriction in the middle of the chest ("butterflies in the stomach") or nausea. Usually he is unaware that his body is reacting. He may be able to identify the effective stimulus. Usually he attributes the reactions of which he is aware to stimuli producing no "feeling" in him but only in his neighbor, whom he strives to emulate. The intensity of his "feeling" or bodily reaction does not depend on his consciousness of the reaction or his identification of the stimulus, but on the significance of the stimulus to him.<sup>96</sup> This, in turn, is the cumulative result of his past experiences, of the problems and conflicts encountered by him during his life.<sup>97</sup>

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<sup>92</sup> *People v. Samuels*, 284 N.Y. 410, 417 (1940)—witness hedging at the trial of the indictment obtained on his unequivocal grand jury testimony, held not guilty of perjury but suffering from fallibility of memory; *State v. Driver*, 88 W.Va. 479, 488 (1921)—medical opinion that the complaining witness was a liar disregarded on the ground that opinion evidence of veracity must be founded on knowledge of the witness' reputation for truth in the community. *United States v. Hiss*, 88 F. Supp. 559 (D.C.N.Y., 1950), permitted psychiatric testimony that a witness was suffering from a mental disease symptomized by "chronic, persistent and repetitive lying" (n. 72, transcript p. 2551). But on cross-examination, the psychiatrist conceded that such diseased persons also tell the truth (Transcript, p. 2598) and there was no known method of determining when such a person is testifying truthfully or falsely (Transcript, p. 2594, 2595, 2889).

<sup>93</sup> *Davidson v. Cornell*, 132 N.Y. 228, 237-8 (1892).

<sup>94</sup> *Op. cit.*, n. 71. This volume contains detailed reports prepared by 132 experts in the field, amply supporting the conclusions herein stated.

<sup>95</sup> Harris, *MODERN TRENDS IN PSYCHOLOGICAL MEDICINE* (1948) 3, 5; Wolff, *LIFE SITUATIONS, EMOTIONS AND BODILY DISEASE* (1951)—address delivered before N.Y. Academy of Medicine, in press.

<sup>96</sup> *Op. cit.* n. 71, p. 665-73, 1062.

<sup>97</sup> *Op. cit.* n. 71, p. 1079.

"Feeling" is an objective condition, the Cornell experiments show, as demonstrable as a break in a bone. It may be accompanied by verbal utterances expressing the same reactions as the organs of the body.<sup>98</sup> While individuals have power to control their verbal manifestations of "feeling" and utter words falsifying it, they cannot control the bodily manifestations of their "feeling." They can alter their true "feeling" only by changing their attitude toward the stimulus to which their body is reacting.<sup>99</sup> If a man is really afraid, angry, resentful, anxious, one or more organs of his body will express that fact so that a trained medical observer can see the feeling and its intensity. By adroit verbal discussions, the physician can determine the type of situation being felt, and the aspect most affectively significant and can intensify or diminish the feeling and even eliminate it.<sup>100</sup>

As the result of his training and professional experiences, a lawyer may become angry, resentful or agonized by subterfuge, insincerity, falsehood or double-dealing. If this attitude is sufficiently entrenched in him, the mere mention of the name of a friend or relative believed by him to be guilty of such traits will produce reactions of anger, resentment or anxiety in one or more organs of his body. A physician—because of *his training* and professional experiences—may attach no importance to falsification. The double-dealing or reminders of it, resulting in a violent reaction or "feeling" in the lawyer's body, will then produce none in the physician's. Outwardly and consciously, both men may appear to be affected similarly by the mention of the falsifier's name. And yet the lawyer may be experiencing bodily reactions or "feelings" which, if repeated too often, will damage or destroy the reacting organ; the physician will be "feeling" nothing. A filing clerk, to whom the esteem of his employer and retention of his employment were of major importance, experienced stomach reactions and feelings of fear when accused of misfiling an important document. When upbraided for inefficiency at an extra-curricular household task, which he believed he had done exceedingly well, his stomach reaction and feeling was anger at the unjust accusation.<sup>101</sup> Superficially, the same type of stimulus was twice directed against him; different feelings resulted because the accusation had different meanings or significances to him. To him, the first was a threatened interference with his place in his workaday world, his status as a human being; the second was merely an unjustified criticism.

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<sup>98</sup> Unpublished results of current experiments, made available for the purpose of this article by Harold G. Wolff, the leading authority in the United States on psychosomatics, under whose direction the Cornell experiments are being conducted.

<sup>99</sup> Sustained bodily manifestations of intense feeling cause diseased conditions, permanent damage and destruction of the affected organs. Illnesses of psychosomatic origin are cured by substituting new personal and social values, new life goals and different attitudes toward the problems found responsible for the feelings. *Op. cit.* n. 71, p. 1090.

<sup>100</sup> *Op. cit.* n. 71, p. 90, 338, 418, 523, 537, 545, 583, 596, 609, 665, 692, 750, 799, 818, 929, 954, 976, 987, 1019.

<sup>101</sup> Wolf & Wolff, *HUMAN GASTRIC FUNCTION* (1943) 112, 118; Harris, *op. cit.* n. 95, p. 24. Colored photographs of the stomach's fear and anger reactions or feelings appear in *op. cit.* n. 71, p. 669. Hypofunctioning of the viscera is the usual fear reaction and hyperfunctioning the usual anger reaction, when these emotions are experienced singly. The former is the normal behavior of a stomach ejecting a poison or other noxious substance; the latter is the normal eating or digestive state.



His knowledge or lack of knowledge of his terror at the first accusation and anger at the second, did not affect his actual feeling or create or alter it. When discussing with the experimenters the prospective removal of his child and grandchild from his home to another city, the subject said: "I don't believe my daughter wants to leave her mother." But his stomach showed that he was angry and resentful at the removal and did not truly feel the placidity his words indicated.<sup>102</sup>

Scientifically, "feeling" is not provable by the testimony of the affected individual or the opinion of a lay observer. "A man's state of mind like the state of his digestion is a question of fact,"<sup>103</sup> but not one determinable by a lay jury or judge on the man's testimony of his feelings or testimonial demeanor. His stomach may know how he feels, but his stomach will not tell him in language he can understand; nor will he necessarily know which stimulus caused his stomach to feel as it does.

The Cornell experimenters are endeavoring to ascertain the cause and cure of nonmicrobic diseases such as stomach ulcers, ulcerative colitis, diarrhea, arthritis, diabetes, high blood pressure, convulsions, epilepsy, asthma, hives, goiter, hay fever, migraine headaches, backaches and sinusitis. In the process, they have given the law an insight into the conditions we call fear, anger, resentment, anxiety, hostility and pain. Their published reports show us what a criminal suspect "feels" when he is "terrorized" and "tortured" by stimuli similar to courtroom or police station interrogation and psychiatric interviews;<sup>104</sup> and what the law-abiding members of the community "feel" as they meet their daily interpersonal and societal conflicts and unsolvable problems.

When the scientific evidence of the true feelings of the suspect is examined in the light of the scientific evidence of the true feelings of the rest of the community, courts desirous of reaching determinations on factual, rather than emotional, bases cannot continue to outlaw the pre-arraignment confession—obtained by prolonged police interrogation and psychiatric devices—on the ground of "unfairness."

As every amateur woodsman has discovered to his sorrow when endeavoring to touch a resting porcupine, its dart-like quills are easily detached and become embedded in his skin. The fluid ejected by the skunk and the venomous fangs lashed out by the snake, when similarly approached, soon teach the amateur to keep his distance in their vicinity. The human body reacts in comparable ways to whatever threatens a man's security, values and goals; and to words or other symbols of such threats. Conflicts with friends, relatives, business associates, employers, employees, customers, tax collectors,, policemen and his own desires or dreams of

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<sup>102</sup> *Op. cit.* n. 71, p. 672.

<sup>103</sup> Paraphrasing *Edgington v. Fitzmaurice*, 29 Ch. Div. 459, 483 (1885), quoted in *op. cit.* n. 57, p. 51.

<sup>104</sup> *People v. Leyra*, n. 23, held that a confession made to a psychiatrist employed by the police, but believed by the defendant to be curing his sinus headache, was obtained by "torture of the mind" which "is just as contrary to inherent fairness and basic justice as torture of the body." The defendant claimed the psychiatrist hypnotized him.

what he wishes to be, are among the situations to which a man's viscera will react by defensive and offensive activity.<sup>106</sup> His body will react to a threatening problem as to an invading or threatening person, parasite or poison.

The law has long recognized that a man's arm and fist may strike out in defense against a threatened corporeal assault. The Cornell experiments show that his viscera may engage in similar defense against a threatened incorporeal assault. Individuals differ in their approaches to such threats. Some retreat and withdraw to cover, some evade and ignore, some attack and fight. Some react in one way during their youth and in another at maturity. Some detect threats in situations which others find reassuring or inconsequential. Some become conditioned and indifferent to an oft-repeated threat; some react more vigorously with each repetition.<sup>106</sup> These reactions we know as emotions or feelings of fear, anger, hate, hostility, resentment, anxiety and indifference. They are experienced by all men in the course of their daily living, as they strike ruts and obstructions in the form of frustrations. Men become frightened by the loss of their jobs, angered by their friends, resentful of their neighbors, hostile to their relatives or depressed by their own lack of achievement. If more than superficial, these emotions are expressed in hypofunctioning or hyperfunctioning of one or more organs of the body. Usually only one organ behaves abnormally.

Such abnormal functioning or bodily reaction and "feeling" does not affect speech, locomotion or carriage, unless endured for years. It would not be evident in a phonographic, wire or tape recording or sound motion picture of a normal defendant in the act of confessing.<sup>107</sup>

The effect of intense fear, terror and alarm on the human body was observed by a Dutch physician, who attended the medical needs of a number of his pre-war patients while they were incarcerated in a Nazi concentration camp during World War II. Before their imprisonment, they had been respected, successful merchants and professional persons, suffering from stomach ulcers. In the concentration camp they were subjected to indignations, deprivations, physical and mental torture and threats. They never knew at the beginning of the day whether they would still be alive at sundown. There was endless interrogation, marching, use by their captors of every device thought to break a man's spirit. And yet they lost all manifestations of their peptic ulcerations. A group of Far East missionaries, suffering from severe migraine headaches prior to the war, lost their headaches while incarcerated in a Japanese concentration camp. In spite of the physical and mental

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<sup>106</sup> *Op. cit.* n. 71, p. 1059.

<sup>106</sup> *Op. cit.* n. 71, p. 1063-4; 90-112.

<sup>107</sup> Contemporaneous recordings have been accepted as conclusive refutation of threats and coercion by the police in obtaining the confession. *State v. Perkins*, 355 Mo. 851 (1947); *People v. Hayes*, 21 Calif. App. 2d 320 (1937); *Williams v. State*, n. 86, p. 994; *Commonwealth v. Roller*, 100 Pa. Super. 125 (1930); *Commonwealth v. Clark*, 123 Pa. Super. 277 (1936). The tape recording of the confession to the psychiatrist in *People v. Leyra*, n. 23, sounded normal and natural; the jury and trial court accepted the confession as voluntary and non-coerced, but the appellate court found "torture of the mind" and unfairness. See n. 104.

torture to which they were subjected, and their well-grounded fear of their captors, they emerged from their imprisonment minus their pre-war illness, for which an American physician had been treating them.<sup>108</sup> In the Dutch merchants and the Far East missionaries, the stresses and strains of their normal civilian life were more intensely "felt" than the horrors of the concentration camp. For them, the constant striving to gain the esteem of their neighbors and maintain their positions in their business and social communities were threats felt more keenly and disastrously than the tortures of wartime imprisonment. The merchants' stomachs reacted to the civilian threats by overactivity. The mucous lining became engorged, bloody and finally ulcerated. Which is the way the bodies of many people react to protracted conflicts causing them anger, anxiety, hostility and resentment.<sup>109</sup> The missionaries reacted to their civilian threats by a dilatation or swelling of the blood vessels and large arteries of the head, the thumping or abnormal pulsation of which is felt as a severe migraine headache. Such is the bodily reaction of many people to situations causing them anger, resentment, hostility and humiliation.<sup>110</sup>

When reacting to intense fear, the affected bodily organ usually hypofunctions. The stomach stops its normal digestive processes and goes thru the routines producing belching, heartburn, lack of appetite, nausea, distention and vomiting. It reacts similarly at times of great disappointment, discouragement and sadness. When the conditions producing the fear reactions are terminated, the stomach returns to its normal state.<sup>111</sup> No transitory or permanent injury to the stomach results, such as the peptic ulcerations following the hyperfunctioning reaction to situations producing anger, hostility and resentment. If police interrogations cause fear, terror and alarm in the criminal suspect and his body reacts to the interrogations via his stomach, he may become nauseated and vomit. But he will not suffer with stomach ulcers as do the law-abiding citizens who react to the conflicts of their daily life via their stomachs.

When intense fear is felt in the intestines, they will stop their normal functioning and produce the condition known as constipation.<sup>112</sup> When the more aggressive emotions—anger, hostility and resentment—are felt in the intestines, there is an engorgement of their mucous lining, bleeding, diarrhea and eventually ulcerative colitis. Here again the criminal suspect affected by fear runs no risk of temporary or permanent internal injury, while the citizen reacting to the stresses of his daily life via his intestines will be seriously incapacitated.

The skin "feels" intense fear by becoming cold and wet, as the cutaneous blood vessels or capillaries constrict. When the conditions inducing the feeling of fear are altered, the skin returns to its normal condition. But the man who re-

<sup>108</sup> *Op. cit.* n. 71, p. 1079-80, 612; Wolff, HEADACHE AND OTHER HEAD PAIN 341-2 (1948). The stomach ulcers and migraine headaches recurred when the patients were released from the concentration camps and resumed their normal business and missionary activities.

<sup>109</sup> *Op. cit.* n. 101, p. 161-74; *op. cit.* n. 71, p. 656-73.

<sup>110</sup> *Op. cit.* n. 71, p. 609-14; Wolff, *op. cit.* n. 108, p. 266-98, 314.

<sup>111</sup> *Op. cit.* n. 101, p. 112-5, 128.

<sup>112</sup> *Op. cit.* n. 71, p. 679-730, 1065-8.

acts to his interpersonal, business or societal difficulties via his skin will develop hives or eczema, both irritating and painful diseases.<sup>113</sup> Here again, the criminal suspect being interrogated at the police station and feeling intense fear by skin reactions sustains a possible discomfort as against the severe abnormalities suffered by the law-abiding skin reactor.

The "feeling" scale continues to weigh heavily against the law-abiding citizen exposed to the conflicts of daily life and favors the criminal suspect whose only irritant is prolonged police interrogation, when their respective circulatory systems, airways or muscles react or "feel." The anger, resentment, hostility and anxiety of the citizen appear in his body in the form of high blood pressure, heart damage,<sup>114</sup> hay fever, breathing difficulties, asthma,<sup>115</sup> backaches and vascular headaches.<sup>116</sup> The terrified criminal suspect may become pale as his blood vessels constrict; but when the interrogation is completed, his circulatory system will resume its normal state. The mucous membranes of his nasal cavities will not become red, swollen and dripping with profuse secretions, obstructing his breathing, as do those of the business man who resents the machinations of his partner. Nor will his bodily reactions to his interrogators involve inflammation and tearing of the eyes, tenderness in the cheeks, forehead and sinuses, and give him a painful sinus headache, as did the hostile reaction of a young hospital physician to the inefficiency of his superior.<sup>117</sup> The suspect's fear, if felt by his nose, will cause its mucous membranes to become dry, blanched and shrunken. The more abject his fear, the more his nasal air passages will widen. While the law-abiding citizen, or spouse with an officious mother-in-law, reacts to his conflicts by nasal obstruction, facial pain and sinusitis, the criminal suspect will breathe with ease.<sup>118</sup>

Until we eliminate the interpersonal and societal conflicts encountered by each of us in our daily lives, engendering concomitant feelings of anger, resentment, hostility and anxiety in our bodies, the criminal suspect subjected to police interrogation is more "fairly" treated than we treat ourselves. The only feeling of his involved in the "fairness" of confessions, is his fear. The rest of the human emotions are daily experienced by each of us, and are accompanied by much more serious and lasting physical ills than the fear felt by the suspect.

The appellate courts' feeling that it is "unfair" to deprive the arrested suspect of normal sleep and interrogate him during an all-night vigil is similarly without factual basis. A normal, average member of our community piloted an airplane across the ocean while foregoing sleep for more than 34 hours.<sup>119</sup> Notable

<sup>113</sup> *Op. cit.* n. 71, p. 987-1015.

<sup>114</sup> *Op. cit.* n. 71, p. 976-83.

<sup>115</sup> *Op. cit.* n. 71, p. 545-81.

<sup>116</sup> *Op. cit.* n. 71, p. 750-71; 605-14.

<sup>117</sup> *Op. cit.* n. 71, p. 545-64; Wolff, n. 95; Holmes, *THE NOSE* (1950) 62-3, 67-8.

<sup>118</sup> Holmes, *op. cit.* n. 117, 59-60.

<sup>119</sup> Charles A. Lindbergh flight of May 20-21, 1927. In *Ashcraft v. Tennessee* n. 4, p. 150, a 36-hour police interrogation was described by the suspect as an "unbearable strain on his nerves."

inventors, authors, jurists and actors have made major contributions to our civilization without the usual interruptions for sleep.

For four successive days, three persons daily spent twelve consecutive hours multiplying four place numbers by four place numbers without aid of pencil or paper. Before and after each twelve-hour multiplication session, the workers faced and answered a battery of psychological tests and interrogatories. They were kept incommunicado during the experiment. At its completion, the four days seemed to them "like one long nightmare" which they "would not repeat for \$10,000"—a remark duplicated almost *verbatim* by each defendant challenging the validity of his pre-arraignment confession. Their final physical examinations showed no signs of unusual physical fatigue; their scores on the arithmetical problems gave no evidence of mental fatigue<sup>120</sup>—findings duplicated in the medical reports supporting challenged pre-arraignment confessions.

What the layman calls "mental fatigue" is actually boredom or monotony. It does not interfere with the functioning of the normal intellectual processes and is not painful. Four trained observers tested their pain perception thresholds every two hours during a twenty-four hour session of compulsory wakefulness. The thresholds remained normal and constant. Had fatigue deflected their attention, their thresholds would have fluctuated from the norms.<sup>121</sup> They were as mentally alert at the end of the experiment as at the beginning. That prolonged interrogation at a police station can cause a fatigued suspect to deliver a calm, coherent narration of a crime he never committed is clearly purple prose with no scientific support. His fatigue will be physical, not mental. When sufficiently fatigued, he will fall asleep painlessly.

"Mental torture," like "mental fatigue," is a lay concept unrelated to reality. It implies the use against the mind or "spirit" of devices eliciting pain, similar to those once used against the body. The exposure of a criminal suspect, "exhausted" from lack of sleep, to the unrelenting interrogation of a psychiatrist ostensibly curing him of a sinus headache, is such "torture of the mind."<sup>122</sup> The term was first used by the Supreme Court to describe confessional procedures abroad;<sup>123</sup> later, to support the invalidation of a confession obtained without physical violence, threats of violence or inducements.<sup>124</sup> "Physical violence breaks the will to conceal, lie or stand by the truth; the will is as much affected by fear as by force." Therefore, said the court, "there is torture of mind as well as body;" prolonged interrogation, while incommunicado, may "torture the mind

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<sup>120</sup> Blum, *INDUSTRIAL PSYCHOLOGY* (1949) 236-40; 55 *Psychological Monographs* 5 (1946).

<sup>121</sup> PAIN, published by the Assn. for Research in Nervous and Mental Disease 5-6 (1943). This volume contains the results of experiments on the subject conducted by 37 medical experts. The pain perception threshold is "the lowest perceptible intensity of pain."

<sup>122</sup> *People v. Leyra*, n. 23.

<sup>123</sup> *Ashcraft v. Tennessee*, n. 4, p. 155.

<sup>124</sup> *Watts v. Indiana*, n. 3.

but put no scar on the body."<sup>125</sup> The court held the use of confessions obtained by torture of the mind as unfair and repugnant to our notions of decency as the use of confessions obtained by physical torture. "Torture of the mind" thus became a judicially-determined painful experience, elicited by prolonged questioning and psychiatric devices, affecting the suspect not only with fear but with something akin to the pain induced by the torture chambers of medieval days and more recent concentration camps.

Scientifically, pain is a sensory experience transmitted thru separate nerve structures similar in function and structure to those conveying sensations of touch, pressure, heat and cold.<sup>126</sup> The Cornell experimenters have been able to segregate its physical or sensory aspects from the feelings or bodily reactions following the sensation. Twitching, blinking, withdrawal, vocal and facial expressions of displeasure, sweating, high blood pressure, rapid heart action and feet tapping are such reactions. The pain itself is perceived with like intensity by all normal, healthy human beings. But their feelings or reactions to pain differ as widely as their feelings or reactions to the interpersonal and societal conflicts of their daily lives. With pain, as with stimuli arousing fear, anger, resentment or hostility, a man's feelings or reactions are determined by the significance or meaning of the painful sensation to him. This, again, is governed by his prior life experiences.<sup>127</sup> With sensitive apparatus and trained physicians as guinea pigs, twenty-two increments of intensity of pain have been measured between the common pain threshold and the commencement of tissue damage. All humans perceive these twenty-two degrees of pain—if their nerve structures are intact—between the first pin prick or other minimal painful stimulus and the final or maximal stimulus before actual injury occurs. Cutaneous pain is perceived as a pricking or burning sensation; visceral pain as a deep ache.<sup>128</sup> Pain is the body's alarm response to threatened or actual *physical* injury.

Prolonged interrogations, incommunicado custody, psychiatric interviews and lack of sleep, cannot cause pain. Even verbal threats, promises or inducements cannot cause pain. The nerve structures thru which pain is perceived are insensible to such stimuli.<sup>129</sup> Feelings or reactions accompanying protracted questioning are not pain reactions; pain must be perceived by the pertinent nerve structures before there is any feeling of pain or pain reaction. Medically, there is no similarity between physical torture of the body and verbal onslaughts upon

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<sup>125</sup> *Watts v. Indiana*, n. 3, p. 52, 60. The defendant was interrogated from 5:30 p.m. to 3 a.m. each day, except Sunday, for one week and then confessed. Jackson, J., dissenting, found no "torture" in the record.

<sup>126</sup> Wolff, *PAIN* 3 (1948). Pain is there treated as a sixth sense and grouped with sight, hearing, smell, taste and touch. The author presently is considered "one of the greatest authorities in the world on the subject" of pain. Lederle Laboratories, *NEWSLETTER FOR THE DENTAL PROFESSION ON FACIAL PAIN* 14 (1951).

<sup>127</sup> *Op. cit.* n. 126, p. 4, 7, 10, 12, 13.

<sup>128</sup> *Op. cit.* n. 126, p. 19, 7.

<sup>129</sup> *Op. cit.* n. 126, p. 15-6; n. 126, and n. 121.

the mind. The kindergarten ditty: "Sticks and stones will break my bones but words can never hurt me," is scientifically sound. Words cannot produce the sensation of pain. On the contrary, when pain already exists, protracted interrogations will raise the pain perception threshold and thereby *lessen* the intensity of the pain. The criminal suspect suffering from painful sinus headache will perceive less pain during police and psychiatric interrogations;<sup>130</sup> the verbal devices judicially declared to be torturing will have the same effect on his habitual pains as an analgetic drug.<sup>131</sup>

The abnormal behavior of the bodily organs reacting to conflicts, including prolonged interrogations, may cause a sensation of pain.<sup>132</sup> But such pain would be much more intense in the law-abiding citizen reacting in anger, resentment and hostility, than in the criminal suspect reacting in fear. The citizen's bodily reactions or emotional feelings result in engorgement, swelling, inflammation and dilatation of his mucous membranes and blood vessels. Such conditions lower the pain perception threshold and thereby increase the intensity of pain.<sup>133</sup> The suspect's bodily reactions or emotional feelings result in constriction and contraction of his mucous membranes. Such conditions do not alter the pain perception threshold or the intensity of pain. Here, too, the suspect is being more "fairly" treated than the rest of the community.

Stripped of their emotional sugar-coating and examined factually, as all legally-operative conditions should be examined, the fears and terrors of the criminal suspect are the minor physical reactions experienced by all persons exposed to interrogation by examiners charged with the duty of uncovering the truth. Some witnesses respond readily and truthfully to questioning; others resist, falsify or endeavor to outwit the interrogator. In the courtroom, the latter usually succeed; they cannot be "badgered" or circuitously forced into the truth. But the trial judge and jury may detect the untruthful testimony and disregard it. The plaintiff or prosecutor can prove his case without the defendant's help and in spite of his refusal to answer the questions put to him, willingly and truthfully. *In the courtroom*, the community need not prove its charge against the defending criminal "out of his own mouth."<sup>134</sup> But prior to arraignment, the community has no choice when an unwitnessed crime has been committed by a criminal astute enough to leave no incriminating evidence behind. It must prove its arraignment case out of the suspect's mouth or set him free.

"Unfairness" is a relative term. We cannot know whether the detained suspect is being "unfairly" treated until we reduce his detention stresses and feel-

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<sup>130</sup> In *People v. Leyra*, n. 23, the suspect declared himself free of his sinus ailment after the psychiatric interview judicially characterized as "torture of the mind."

<sup>131</sup> *Op. cit.* n. 121, p. 10-2, 436-7; *op. cit.* n. 108, p. 579.

<sup>132</sup> *Op. cit.* n. 126, p. 37-64.

<sup>133</sup> *Op. cit.* n. 121, p. 166-334; *op. cit.* n. 126, p. 9-10.

<sup>134</sup> *Watts v. Indiana*, n. 3, p. 54.

ings and those of the average citizen to a common denominator. This the Cornell experiments enable us to do. We need no longer speculate on the physical and mental effects of prolonged interrogation. We know exactly what they will be. We now have tangible, factual proof that they cannot be as painful or as damaging to the suspect's health and well-being as the stresses and feelings endured by the average citizen in his daily life. We must assume that our law enforcement officers do not arrest indiscriminately; have a reasonably grounded suspicion that their suspect perpetrated or participated in the crime; are able and desirous of ascertaining expeditiously whether their suspect is in fact the criminal, and will release him when their suspicions prove unfounded.

If it is "unfair" to expose such a person to the discomforts of interrogation and detention, it is similarly "unfair" to expose employers to the incessant complaints of their employees, husbands to the bickerings of their wives and teachers to the tantrums of their pupils. Such distressing encounters are concomitants of community living. So is the suspect's detention at the police station and obligation to answer questions until his questioners are satisfied that he is answering truthfully. Psychiatric devices have not heretofore been deemed "unfair." Their efficacy in dispelling unjustified fright has long been recognized.<sup>135</sup> The community's "feeling" about prolonged interrogation is embodied in the statutes directing arraignment immediately or without unnecessary delay. Confessions outlawed for violation of such a command are not here involved.

The "unfairly" obtained confessions are in a category all their own. Medical science has now demonstrated that due process does not require such a classification or such surrender of community interests.

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<sup>135</sup> *Tillow v. Daystrom Corp.*, 273 App. Div. 1045 (N.Y. 3rd, 1948); *Palloni v. BMT Corp.*, 215 App. Div. 634 (N.Y. 3rd, 1926)—fright not reasonable ground for refusing to submit to operation recommended by workmen's compensation board.